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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/809,448	03/15/2001	Kjell Andersson	01-212	5219

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BACHMAN & LaPOINTE, P.C.  
Suite 1201  
900 Chapel Street  
New Haven, CT 06510-2802

EXAMINER

JUSKA, CHERYL ANN

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 08/25/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

AS2

**Office Action Summary**

Application No.

09/809,448

Applicant(s)

ANDERSSON ET AL.

Examiner

Cheryl Juska

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05 June 2003.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 2-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Response to Amendment***

1. Amendment A, submitted as Paper No. 6 on June 5, 2003, has been entered. Claim 1 has been cancelled, claims 2, 3, 5, 7, and 8 have been amended, and new claims 9-11 have been added as requested.

### ***Claim Rejections - 35 USC § 102***

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 9, 5, 7, and 8 are rejected under 35 USC 102(e) as being anticipated by US 6,332,733 issued to Hamberger et al.

Claims 11, 5, 7, and 8 are rejected under 35 USC 102(e) as being anticipated by US 6,332,733 issued to Hamberger et al.

Independent claim 1 has been replaced with new independent claims 9 and 11. However, it is asserted that the cited Hamberger reference still anticipates these new claims. Specifically, Hamberger discloses a tongue and groove joint for two flat sectional floor pieces (abstract). Figure 1 shows a left (i.e., first) piece having a groove 28 and a projection 36 thereunder which matches the tongue 20 and recess 22 of the right (i.e., second) piece. The projection 36 includes a surface 34 that slopes downwards from an outer edge of the projection to an inner edge, thereby creating a greater thickness at said outer edge than the thickness of the projection adjacent the groove. Surface 34 is matched by surface 24 of the right piece. Additionally,

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tongue 20 has a beveled edge (shown between reference numbers 20 and 24). Furthermore, the vertical height of projection 36 is approximately the same height as the lower surface of said groove. Thus, it can be seen that claims 9, 11, 5, 7, and 8 are anticipated by the Hamberger patent.

***Claim Rejections - 35 USC § 103***

4. Claims 3 and 4 are rejected under 35 USC 103(a) as being unpatentable over the cited Hamberger reference, as applied to claims 9 and 11 above, in view of WO 96/23942 issued to Andersson.

Claims 10, 2, 5, 7, and 8 are rejected under 35 USC 103(a) as being unpatentable over the cited Hamberger reference in view of WO 96/23942 issued to Andersson.

Hamberger fails to teach the use of an anti-slip treatment or coating. However, said anti-slip treatments or coatings are well known in the art. For example, Andersson discloses a tongue and groove joint that has flocked layers on matching surfaces which increase the friction on said surfaces (abstract and Figure 5). Thus, it would have been obvious to one skilled in the art to employ the flocked anti-slip layer of Andersson in the Hamberger invention in order to increase the friction of the matching surfaces, thereby enhancing the locking capability of the joint. Therefore, claims 3, 4, 10, 2, 5, 7, and 8 are rejected as being obvious over the cited prior art.

5. Claim 6 is rejected under 35 USC 103(a) as being unpatentable over the cited Hamberger and Andersson references, as applied to claim 2 above.

Hamberger does teach the feature of claim 6, wherein the upper defining surface of the recess is substantially planar, but does not teach the other limitation that the upper surface of the

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projection is also planar. Despite Hamberger's teaching that said surface is angled, it would have been obvious to one skilled in the art to modify the angle to be substantially planar, thereby matching the recess surface, since such a modification would have involved a mere change in the shape of the joint profile. A change in shape is generally recognized as being within the level of ordinary skill in the art. *In re Dailey*, 149 USPQ 47. Therefore, claim 6 is rejected as being obvious over the prior art.

### ***Response to Arguments***

6. Applicant's arguments filed with Amendment A have been fully considered but they are not persuasive. In particular, applicant traverses the rejections based upon Hamberger by asserting the new claims 9 and 11 define "element 16" and its relationship with respect to the "surface 26" (Amendment A, page 5, 3<sup>rd</sup> paragraph, lines 1-5). Applicant also argues that new claims 9 and 11 define "the relative thickness of the element 16 as it slopes from its outer end to the edge near the groove" (Amendment A, page 5, 3<sup>rd</sup> paragraph, lines 1-6). Applicant then states, "The particular structure now set forth in claims 9 and 11 is neither shown, disclosed, nor rendered obvious by the Hamberger et al. patent." (Amendment A, sentence spanning pages 5-6). Presumably, "the particular structure" applicant is referring to is the "element 16," "its relationship to surface 26," and "the relative thickness" as discussed above.

In response, it is first noted that the statement about "element 16" and "surface 26" is somewhat confusing to the examiner in that reference number "16" is employed in the specification to describe the projection while reference number "26," although not explicitly stated in the specification, appears to describe the non-slip surface (see Figures 3-5). Since,

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claims 9 and 11 do not recite the non-slip surface, it is unclear to the examiner what applicant is trying to argue.

Secondly, it is asserted that applicant has not really pointed out how the reference does not teach or render obvious the claimed features. Applicant merely makes the assertion but does not discuss how the present invention is different from the prior art.

Thirdly, it is reiterated that Hamberger anticipates the limitations of claims 9, 11, 5, 7, and 8 as set forth above. Specifically, Hamberger teaches the downward slope of the projection from an outer edge (see edge joining surfaces 34 and 36 in Figure 1) to an inner edge which is substantially below the groove opening (see the width of groove as depicted by line S in Figure 1 and note its alignment with the bottom edge of the sloped surface 34). Hence, the thickness of the projection at the outer edge is greater than the thickness of the projection at the inner edge. Thus, claims 9, 11, 5, 7, and 8 are anticipated.

7. With respect to claims 3, 4, and 10, applicant traverses on the grounds that the secondary reference of Andersson (US 6,029,416) is not available as prior art (Amendment A, page 5, 2<sup>nd</sup> paragraph). In response, it is first noted that the rejection is not based upon US 6,029,416, but rather the WIPO equivalent, WO 96/23942, which has a publication date of August 8, 1996. The statute 102(b) states, "A person shall be entitled to a patent unless - ... (b) the invention was *patented or described in a printed publication in this or a foreign country* or in public use or on sale in this country, *more than one year prior to the date of the application for patent in the United States.*" (emphasis added). Even if the present application is given the effective filing date of the parent application 09/297,761 (i.e., May 7, 1999), the WIPO publication date of August 8, 1996 predates this date by more than one year. Hence, WO 96/23942 issued to

Andersson is a proper reference according to 102(b) and the rejections based thereon are maintained.

### *Conclusion*

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Cheryl Juska whose telephone number is 703-305-4472. The Examiner can normally be reached on Monday-Friday 10am-6pm.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Terrel Morris can be reached on 703-308-2414. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



CHERYL A. JUSKA  
PRIMARY EXAMINER

cj  
August 21, 2003